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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/940,795

08/29/2001

Larry Hamid

12-61 US

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01/11/2006

FREEDMAN & ASSOCIATES

117 CENTREPOINTE DRIVE

SUITE 350

NEPEAN, ONTARIO, K2G 5X3

CANADA

EXAMINER

DAVIS, ZACHARY A

ART UNIT

PAPER NUMBER

2137

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/940,795

Applicant(s)

HAMID, LARRY

Examiner

Zachary A. Davis

Art Unit

2137

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.


EMMANUEL L. MOISE
SUPERVISORY PATENT EXAMINER

Continuation of 3. NOTE: Although the amendments to the claims would overcome the rejection of Claims 7-18 under 35 U.S.C. 112, second paragraph, Applicant's response has not sufficiently addressed the rejection of Claims 1, 2, 4, and 5 under 35 U.S.C. 112, second paragraph. Specifically, Applicant argues that the limitation "the subset" in Claims 1 and 2 has a clear antecedent basis in Claim 1, line 7. However, the Examiner notes that the portion of Claim 1 quoted by Applicant recites more than one subset: "A SUBSET of A PLURALITY OF predetermined SUBSETS" (emphasis added). It is not clear whether the limitation refers to "a subset" or to another one of "a plurality of ... subsets". The Examiner further notes the amended limitation of "at least two of the subsets of the plurality of predetermined subsets" in lines 7-8 of Claim 1; although the antecedent basis is clear for "the plurality of predetermined subsets", the limitation at issue ("the subset") could also refer to one of the "at least two of the subsets". Applicant's argument is not persuasive to overcome the rejection of Claims 1, 2, 4, and 5 under 35 U.S.C. 112, second paragraph, and therefore is not considered to materially reduce or simplify the issues for appeal.

Continuation of 13. Other: The Examiner notes that Applicant has petitioned for a one-month extension of time under 37 CFR 1.136(a). Therefore, the period for reply expires four (4) months from the mailing date of the final rejection, as noted under item 1a above. The Applicant is reminded that further extensions of time under 37 CFR 1.136(a) may be granted, but in no event will the statutory period for reply expire later than six (6) months from the mailing date of the final rejection.